

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 967 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? Yes.

2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy
of the judgement? No.

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No.

5. Whether it is to be circulated to the Civil Judge?
No

JAWAHAR S JARDOSH

Versus

SURAT MUNICIPAL CORPORATION

Appearance:

MR PK PANCHOLI for Petitioner

MR PRASHANT G DESAI for Respondent No. 1

MR RS SANJANWALA for Respondent No. 2, 3

CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 17/01/97

ORAL JUDGEMENT

Rule.

In this petition, pleadings of both the sides are complete. I have heard both the sides at length on merits. I therefore, proceed to dispose of this petition finally.

2 Jawahar S. Jardosh residing at 8/1327, Bhansali Pole, Gopipura, Surat-1 has filed the present petition alleging that the respondents nos 2 and 3 have raised their house in violation of the building bye laws and rules of the corporation and the Municipal Corporation respondent no.1 is siding with respondents nos 2 and 3 as the respondent no.2 is working with respondent no.1 corporation. It is contended by the petitioner that the respondents nos 2 and 3 are raising the construction adjoining the public road and in contravention of the building rules of the corporation. Therefore, the petitioner sought a writ of mandamus for the removal of illegal construction carried out by respondents nos 2 and 3 in the property no. 1354 and to further restrain them from raising any further construction in the said property.

3. My learned learned predecessor was pleased to issue notice . In response to the said notice, respondents nos 2 and 3 have filed their reply. They contended that though the petitioner was aware that the construction which they have carried out is legal and valid as he was informed by the municipal corporation on 13.10.95 that the plan and the construction in question was legal and regular he has come before this court by making malafide claim. The petitioner had made numerous applications against the respondents nos 2 and 3 and though he had not succeeded in the said applications and by concealing the real facts , he has come with this false and vexatious petition and therefore, the same should be dismissed with costs. It is further contended that the road in question is a service line and that it is not a road. If the petitioner has got his only back side door in this line and the frontage building is on the other side. But inspite of this he has raised a false contention that the construction in question is illegal.

4. The respondent corporation also opposed the claim of the petitioner and they supported the claim of respondent nos 2 and 3 that the construction in question is legal and regular and there is no illegality in raising the construction in question.

5. The petitioner has averred in petition in para 3 that the construction raised by respondent no.2 is in

clear violation of the building rules of the corporation and that said construction is raised by him without obtaining any permission. Relevant pleading of the petitioner made in para 3 of the petition is reproduced below for convenience.

".....Because of his position and influence the respondent no.2 has constructed his house in clear violation of Building Rules of the Corporation and in complete disregard of the rights of the petitioner as of easement etc. The petitioner also submits that the respondent no.2 has not obtained any permission for such illegal construction."

6. Now the above pleading of the petitioner is a clear attempt to play fraud on the court because the present petitioner was already informed by the respondent no.1 corporation by its letter dated 10.10.95 that the construction in question was quite legal and regular. He has only made a reference of his application and complaint given by him by the letter dated 2.1.95. Though he has produced the letter given by the corporation dt. 13.10.95 and though he was informed that the construction in question was regular and legal one. He has averred in his petition in para no.6 as under:

" The petitioner most respectfully submits that in response to his complaints by a letter dated 13.10.95, he is being informed that the illegal construction of property No.1354 is regularised vide order dated 1.9.95"

{Emphasis is supplied by me}

His averment that the illegal construction has been regularised is absolutely a false statement. That reply only says that he was making complaints of illegal construction but the construction becomes regularised one as it is in a lane. But in spite of the same his conduct in insisting that the construction in question is without permission and is illegal one, is obviously a patent malafide false statement made by him.

7. From the reply of the respondent as well as the documents, it would be quite clear that the municipal corporation had granted permission for the construction in question on 15.5.90. While granting the said permission the corporation had made it clear that the road in question was a service lane and that the

construction as per the plan submitted to the corporation was approved by the corporation and the corporation had also given necessary sanction for the said construction. No doubt subsequently on getting complaint from the present petitioner, the corporation had issued a notice to the respondent no.2 to show cause as to why permission granted in his favour should not be cancelled by their notice dated 4.2.95. But in reply to the said notice, the respondent no.2 had produced necessary materials and ultimately, the corporation had withdrawn the said notice on 4.2.95 by its letter dated 2.6.95. When the municipal corporation has treated the lane in question as service lane and the corporation has granted the sanction, it is not possible for this court to hold that the construction in question is an illegal construction. The road in question is ending at the backside of the present petitioner. The fact that the petitioner is having his backside door opening in this lane and that front door of his house on the other side makes it very difficult to accept the contention of the petitioner that the lane in question could not be treated as service line. There is nothing on record to show that either as per revenue record or as per the municipal record, the lane in question was treated as a public road and that it was never treated as a service lane prior to 1990.

8. It must be mentioned here that the respondent no.2 has obtained the permission in question in the year 1990 and he has started his construction and the same was completed much prior to the filing of the present petition in the year 1996. Thus the petitioner who is the neighbour of the respondents no.2 and 3 was quite aware of the construction in question and his filing the petition in 1996 even after the authorities inform him that the construction is valid and legal, is a clear case of causing harassment to the respondents nos. 1 and 2 by the petitioner. The petitioner in his petition avers that there is obstruction of easementary right but it is not mentioned as to how and what easementary right he is having and how it is obstructed. Of course for the said purpose the proper remedy would have been to approach the civil court and not to come before the High Court in writ petition after six years. Thus I hold that there is no substance in this petition. The petition is therefore, liable to be dismissed and the same is accordingly dismissed and petitioner is ordered to pay the costs of the petitioner which are quantified at Rs. 1000/-.

